

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
GREAT FALLS DIVISION**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

EMERSON PAUL BIRDTAIL, II,

Defendant.

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**CR-15-09-GF-BMM**

**ORDER**

United States Magistrate Judge John Johnston entered Findings and Recommendations in this matter on December 6, 2019. (Docs. 56.) Emerson Birdtail, II (Birdtail) filed objections on December 6, 2019. (Doc. 57.) The Court reviews de novo findings and recommendations to which a party objects. 28 U.S.C. § 636(b)(1).

Judge Johnston conducted a revocation hearing on December 5, 2019. (Doc. 55.) The United States accused Birdtail of violating his conditions of supervised release by 1) committing another crime; and 2) by consuming alcohol on two

separate occasions. (Doc. 52.) Birdtail admitted that he had violated the conditions of his supervised release by consuming alcohol on two separate occasions. (Doc. 55.) With respect to violation 1, Birdtail did not admit or deny that he had committed another crime only that he had received criminal citations from a Montana Highway Patrol Officer. The government did not attempt to prove violation 1.

Birdtail now opposes Judge Johnston's Findings and Recommendations, objecting to the recommended sentence of 4 months in custody and requests to allocute before the undersigned. (Doc. 57.)

The Court conducted a revocation hearing on December 17, 2019. (Doc. 59.) The Court has also considered the 18 U.S.C. § 3553(a) factors and agrees with Judge Johnston's Findings and Recommendations in part. Birdtail's violations of his conditions represent a serious breach of the Court's trust. This violation proves serious. Judge Johnston has recommended that the Court revoke Birdtail's supervised release and commit Birdtail to the custody of the Bureau of Prisons for 4 months. (Doc. 56 at 4.) Judge Johnston further has recommended a term of 28 months of supervised release follow. (Doc. 56 at 4.)

**IT IS ORDERED** that Judge Johnston's Findings and Recommendations (Doc. 56) are REJECTED IN PART and ADOPTED IN PART.

**IT IS FURTHER ORDERED** that Defendant Emerson Paul Birdtail, II be sentenced to custody of time served, followed by 28 months supervised release.

DATED this 17th day of December, 2019.

A handwritten signature in blue ink, reading "Brian Morris". The signature is fluid and cursive, with the first name "Brian" and last name "Morris" clearly distinguishable. It is positioned above a horizontal line.

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Brian Morris  
United States District Court Judge

